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ABSTRACT

In accordance with provisions of the Vocational Education Amendments of 1976, a study was conducted to analyze and make recommendations for improving the fiscal, equity, incentive, and sanction provisions of the federal vocational education legal framework and the applicable civil rights laws that interact with vocational education. Two interrelated types of research were used to accomplish the project's research objectives: deductive analysis and field study, with the deductive analysis of the Vocational Education Act (VEA) and related statutes, rules, and regulations used to identify the issues to be addressed during the field study. It was found that the VEA legal framework consisted of the following--a goal "to assist states in ensuring that all persons in all communities have ready access to vocational training or retraining which is of high quality, which is realistic in light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training" and five major objectives; three parts, encompassing state vocational education programs (general provisions, basic grants, program improvement and supportive services, programs for the disadvantaged, and consumer and homemaking education programs); national programs, including bilingual programs and emergency assistance for remodeling vocational facilities; definitions; state administration and planning; funds distributions; and civil rights obligations. The study concluded that there are six principles which relate to the achievement of compliance with and enforcement of the provisions of the VEA, and other laws, and that these principles are being met with varying degrees of success. (KC)

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VOLUME 1

AN ANALYSIS OF THE FISCAL AND EQUITY PROVISIONS OF THE VEA

- PART I (INTRODUCTION)
- PART II (SUMMARY OF MAJOR FINDINGS AND CONCLUSIONS)

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PREFACE AND ACKNOWLEDGEMENTS

This is Volume 1 of a paper prepared by Long and Silverstein, P.C. for the National Institute of Education entitled An Analysis of the Fiscal and Equity Provisions of the VEA. Volume 1 contains Part I of the paper (an introduction to the research) and Part II (a summary of the major findings and conclusions). Volume 2 which is separately bound, contains Part III (an analysis of the fiscal provisions). Volume 3 which is also separately bound contains Part IV (an analysis of the equity provisions of the VEA) and Part V (an analysis of the incentives, oversight mechanisms and sanctions).

In preparing this paper, special acknowledgements are made to David C. Long, Robert Silverstein, Sandra H. McMullan, and Jean Johnson of Long and Silverstein, P.C.; Michael Gaffney of Gaffney, Anspach, Schember, Klimaski and Marks, P.C.; Judy Sinkin, Consultant; and Craig McLaurin of the Lawyers' Committee for Civil Rights Under Law.

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PART I

INTRODUCTION

Part I

Introduction

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PART I

INTRODUCTION

I. Background

Congress has provided Federal financial assistance to states for vocational education programs for more than a half a century.[1] The early legislation provided grants to the states for specific occupational categories, with limited appropriations for support services.[2]

The congressional approach to vocational education legislation significiantly changed with the passage of the Vocational Education Act of 1963 (VEA).[3] Subsequent amendments (P.L. 90-576) authorized noncategorical grants that increased state flexibility in the development of programs, provided for the special needs of handicapped and disadvantaged persons, and sought to foster coordination among the different agencies and individuals involved in activities affecting vocational education.

In 1976, with the passage of the Education Amendments of 1976,[4] Congress reauthorized and completely revised the VEA. The legislative history[5] indicates that the three major purposes of the 1976 amendments are to: (1) simplify the administration of the VEA while achieving greater accountability;

1/ The Vocational Education Act of 1963, 20 U.S.C. §2301 et. seq.(1976) (hereinafter cited as Sec. 101-195 (20 U.S.C. §2301 - 2461).

2/ Congress enacted the Smith Hughes Act of 1917 as an initial attempt to provide states with financial assistance for vocational education. P.L. No. 64-347. See also the George-Barden Act of 1946. P.L. No. 79-586.

3/ P.L. No. 88-210, 20 U.S.C. §1241 et. seq.

4/ P.L. No. 94-482, 20 U.S.C. §2301 et. seq.

5/ H.R. Rep. No. 94-1085, 94th Cong. 2d Sess. at 2.

(2) increase the level of funding, and (3) eliminate sex bias and sex stereotyping in vocational education.

In addition to amending the VEA, the 1976 amendments charged the National Institute of Education (NIE) with undertaking "a thorough evaluation and study of vocational education programs, including such programs conducted by the States, and such programs conducted under the Vocational Education Act of 1963, and other related programs conducted under the Comprehensive Employment and Training Act of 1963, and by the State Post-Secondary Commissions. . ." [6/] The Legislative mandate specifies that the NIE study is to include:

- a study of the distribution of vocational education funds in terms of services, occupations, target populations, enrollments and educational and governmental levels and what such distribution should be in order to meet the greatest human resource needs for the next 10 years;
- an examination of how to achieve compliance with, and enforcement of, the provisions of applicable laws of the United States;
- an analysis of the means of assessing program quality and effectiveness; and
- a review and evaluation of programs funded under the "Consumer and Homemaking Education" provisions of the law. [7/]

In partial fulfillment of the congressional mandate that NIE examine "how to achieve compliance with, and

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[6/] Sec. 532(b) of the Education Amendments of 1976.

[7/] Id.

enforcement of the provisions of applicable laws of the United States," NIE has contracted with the Legal Standards Project of the Lawyers' Committee for Civil Rights Under Law (contractor) and Long and Silverstein, P. C. (subcontractor) to analyze and make recommendations for improving the fiscal, equity, incentive and sanction provisions of the Federal vocational education legal framework and the applicable civil rights laws that impact on vocational education.

The fiscal provisions included in the study are: funds distribution/application approval, matching, minimum percentage requirements, supplement, not supplant, and maintenance of effort. The "equity" provisions include: sex equity, set-asides for the disadvantaged and handicapped and subpart 4 (special programs for the disadvantaged). The "incentives and sanctions" system include: application approval, monitoring, auditing, and withholding. The "applicable civil rights laws" include Title VI, Title IX, Section 504 and the OCR Vocational Education Guidelines (OCR Guidelines).

For purposes of this paper, the term "Federal vocational education legal framework" includes statutory provisions, legislative history, legislative rules and interpretative rules. The statutes referred to in the paper include the Vocational Education Act of 1963, as amended (VEA),[8/] the General Education Provisions Act (GEPA),[9/] Title VI of the Civil Rights

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8/ 20 U.S.C. §2301 et. seq. The VEA of 1963 was amended in 1976, P.L. No. 94-482, Title II, sec. 202(a), 90 Stat. 2174 et. seq.

9/ 20 U.S.C. §1221 et. seq.

Act of 1964,[10] Title IX of the Education Amendments of 1972,[11] Section 504 of the Rehabilitation Act of 1973,[12] and the Comprehensive Employment and Training Act of 1973, as amended.[13]

The legislative history referred to in this paper includes the House Report accompanying the 1976 Amendments (H. R. Rep. No. 94-1085), the Senate Report accompanying the 1976 amendments (Sen. Rep. No. 94-882) and the Conference Report (H. R. Conf. Rep. No 94-1701).

"Legislative rules" are defined as rules issued by an agency pursuant to statutory authority which implement the statute.[14] Legislative rules are contained in officially promulgated regulations which are originally published in the Federal Register (FR) and subsequently codified in the Code of Federal Regulations (C. F. R.). Regulations are considered to have the "full force and effect of law."[15]

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[10] 42 U.S.C. §2000-D - 2000D-4

[11] 20 U.S.C. §1681, 1682.

[12] 29 U.S.C. §794.

[13] 29 U.S.C. §801.

[14] Kenneth Culp Davis, Administrative Law Text (St. Paul, Minn.: West Pub., 1972), p. 126.

[15] See Standard Oil Co. v. Johnson, 316 U.S. 481, 484 (1942).

This means that a requirement issued as a regulation is as legally binding as a Federal statute -- so long as it is consistent with the statute and is within the scope of the agency's delegated power.

The Department of Education also issues interpretative rules in implementing applicable Federal laws. An "interpretative rule" is defined as a rule or statement issued by an agency to advise the public of the agency's practical interpretation of the statutes and rules that it administers.[16/] "Interpretative rules" clarifying the VEA are generally issued by the Office of Vocational and Adult Education (OVAE) (formerly the Bureau of Occupational and Adult Education (BOAE)) and the Office of General Counsel (OGC). These rules are generally contained in policy memoranda which are not published in the Federal Register.[17/] Interpretative rules clarifying Title VI, Title IX, and section 504 are

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16/ Kenneth Culp Davis, Administrative Law Text (St. Paul, Min.: West Publishing Co., 1972), at p. 126. It should be noted that Section 431 of the GEPA, which sets out the requirements applicable to the issuance of regulations implementing, among other things, education grant programs administered by OE does not distinguish between legislative and interpretative rules. Under Section 431, the term regulation is defined to include "any rules, regulations, guidelines, interpretations, orders or requirements of general applicability prescribed by the Commissioner." This section of GEPA also provides that the Commissioner, concurrent with the publication of a regulation, in the Federal Register, must transmit to Congress a copy of the regulation, which will generally become effective 45 days after transmission unless Congress finds the regulation to be inconsistent with the Act.

17/ The legal status of these interpretative rules is uncertain. (footnote continued on next page.)

(footnote continued from previous page) Faced with questions concerning the legality of published agency circulars and pronouncements containing mandatory language, the courts have generally concluded that the requirements are binding on state and local agencies with actual notice of them, in keeping with §552 (a) of the Administrative Procedure Act (5 U.S.C. §501 et. seq.). See, e.g. Rodriguez v. Swank, 318 F. Supp. 289, 295 (N.D. Ill. 1970), aff'd 403 U.S. 901 (1970); Hike v. Carter, 448 F. 2d 798, 803 (8th Cir. 1971), Kessler v. F.C.C., 326F.2d 673, 689-90 (D.C. Cir. 1963); Section 552 provides, in relevant part, "except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter to be published in the Federal Register and not so published."

In two Supreme Court cases involving DHEW, Wheeler v. Barrera, 417 U.S. 402 (1974) and King v. Smith, 392 U.S. 309 (1968), the court has relied heavily on "requirements" contained in DHEW handbooks. In Wheeler, for example, the court authoritatively cited the handbook entitled Title I ESEA: Participation of Private School Children (DHEW Publication No. (OE) 72-62, which quotes or paraphrases Program Guide No. 24 (cancelled in 1972) in a determination concerning "comparable services" to educationally deprived children in private schools.

Moreover, Courts unwilling to accord guidelines unpublished in the Federal Register an equal status with officially promulgated regulations, nonetheless might find them to be binding on SEAs and LEAs through the practice and policy of judicial deference to agency administrative interpretations. Agency interpretations and guidelines are of "controlling weight" so long as they are consistent with the language of both statute and regulations. See, e.g., Thorpe v. Housing Authority of Durham, 393 U.S. 268 (1969); Bowles v. Seminole Rock Co., 325 U.S. 410 (1945).

With respect to those guidelines containing acceptable courses of conduct which will satisfy a legal requirement, these guidelines presumably have the legal effect of protecting a recipient against audit exceptions if the recommended course of conduct is followed. This assumes that the statements contained in the guidelines are not inconsistent with the statute or regulations. Courts have explained that agency interpretations may be disregarded, particularly where they are at variance with its own regulations' clear language or the clear language of the statute. See, e.g., Frances v. Davidson, 340 F. Supp. 351, 365-66 (D.C., Md.), aff'd., 409 U.S. 904 (1972); Stork v. U.S., 278 F. Supp. 869, 871 (D.C. Cal. 1967), aff'd. 430 F. 2d 1104 (1967).

issued by the Office for Civil Rights (OCR) in the form of policy interpretations, guidelines, procedural announcements, and decision announcements.[18/] These interpretative rules are from time to time published in the Federal Register.[19/]

II. Purpose of this Paper

The purpose of this paper is four-fold. The first purpose is to set out our major findings, conclusions and recommendations regarding the clarity, consistency, comprehensiveness and restrictiveness of the fiscal provisions in the Federal vocational education legal framework.

The second purpose of this paper is to set out our findings, conclusions, and recommendations regarding the intersection of the fiscal provisions of the Federal vocational education laws and regulations with relevant state laws and regulations.

The third purpose of this paper is to set out our findings, conclusions, and recommendations regarding the clarity, consistency, comprehensiveness, and restrictiveness of the equity provisions of the Federal vocational education legal framework.

The fourth purpose is to analyze the Federal incentive and sanction structure and offer recommendations for improv-

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18/ See 43 FR 18630 (May 1, 1978).

19/ See, e.g., The Vocational Education Guidelines, 44 FR 17162 et. seq. (March 21, 1979).

ing the structure.

For purposes of this paper, a requirement is considered to be "unclear" if the full range of acceptable and unacceptable practices under the legal framework cannot be comprehended by thoughtful consideration of the language of the provision and its context in the statute or regulations. The term "inconsistent" means that one provision prescribes or proscribes a certain set of behaviors, whereas another provision covering comparable behaviors prescribes or proscribes a different set of behaviors. One requirement might be inconsistent with another requirement or a requirement might be inconsistent with a legislative objective.

For purposes of this paper, a provision is sufficiently "comprehensive" if it includes all the conditions or criteria necessary to insure that the policy imbedded in the provision will be accomplished, if implemented as drafted. A requirement is considered "overly restrictive" if, although consistent with the VEA statute and legislative history, it places burdens on LEAs and other eligible recipients not necessary to accomplish the stated policy.

III. Limitations of the Paper

There are several aspects of the Vocational Education Act that were not analyzed by the Legal Standards Project, and therefore are not included in the paper. The scope of our analysis is limited to fiscal, equity, and incentive and sanction provisions of the VEA and civil rights statutes

and guidelines pertaining to vocational education. All other provisions in the VEA are beyond the scope of the study and this paper.

With respect to the nature of our analysis, it is important to note that the study is only concerned with Federal and state policies. Whether a particular policy is diligently enforced in actual practice is beyond the scope of the project. In other words, the capacity and commitment to implement policy is not the focus of the study. Other studies commissioned by NIE addressed the issue of program implementation.

IV. Methodology

Two interrelated types of research were used to accomplish the project's research objectives: deductive analysis and field study. The deductive analysis identified the specific issues to be addressed during the field study. The field study examined both Federal and state efforts at interpreting Federal vocational education policy. Both the deductive analysis and the field study were conducted at the Federal and state levels.

The project's analytical process began with an in-depth deductive analysis of the Federal legal framework. First, the VEA and related statutes, rules and regulations were examined for consistency, clarity, and comprehensiveness. Second, the types of incentives and sanctions in the legal

framework were analyzed. Finally, studies performed by others concerning the Federal capacity for implementing vocational educational policy and written documents prepared by the Federal agencies responsible for implementing such policy were reviewed.

The deductive analysis of the Federal legal framework was then supplemented by field research. Key personnel in the Federal system were interviewed concerning their perceptions of the adequacy of the Federal legal framework and the effectiveness of the system of incentives and sanctions.

State level deductive analysis and field work was conducted in four states. The project examined the state legal framework for vocational education, including those legal provisions and documents which interpret and implement the Federal legal framework as well as those which govern vocational education programs operated entirely with state and local funds. An examination of state written materials and interviews with state officials provided insights regarding the state contexts in which Federally funded vocational education programs operate and a general understanding of state policies and procedures.

In selecting the four states to be included in the study, the following criteria was used: (1) geographical representation; (2) degree of urbanization; (3) presence of target populations specified in federal vocational education legislation; (4) size of the state; (5) the size of the vocational education allocation; (6) inclusion of some states in the Abt compliance study and the University of

California finance study; (7) inclusion in the recent GAO vocational education compliance study; (8) inclusion in the compliance reviews required by the recent consent decree in Adams v. Califano (inclusion of such a state or states will facilitate analysis of the effect of Federal enforcement efforts on state policies and procedures); (9) the nature and extensiveness of the state legal framework governing state vocational education programs and related areas; and (1) the extensiveness of the state's criteria and procedures implementing the Federal requirements.

V. Abbreviations Frequently Used

"BOAE" is an abbreviation for the Bureau of Occupational and Adult Education.

"ED" is an abbreviation for the United States Department of Education.

"EDGAR" is an abbreviation for Education Department General Administrative Regulations.

"GEPA" is an abbreviation for the General Education Provisions Act.

"NIE" is an abbreviation for the National Institute of Education.

"OCR" is an abbreviation for the Office for Civil Rights.

"OCR Guidelines" is an abbreviation for the "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs."

"OVAE" is an abbreviation for Office of Vocational and Adult Education.

"Secretary" is an abbreviation for the Secretary of ED.

"Section 504" is an abbreviation for Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap.

"Title VI" is an abbreviation for Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin.

"Title IX" is an abbreviation for Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex.

"VEA" is an abbreviation for the Vocational Education Act of 1963, as amended by P.L. 94-482.

VI. Organization of the Paper

The paper is organized into five parts. Part I which is the introduction to the Legal Standards Project Final Report describes the relationship of this study to NIE's congressional mandate, the scope and methodology of the study and abbreviations used in the text.

Part II entitled "Summary of Major Findings and Conclusions" outlines the legal framework, the study's general findings and conclusions, and analyzes the legal framework in terms of its conformity with six principles which relate to the issue posed by Congress: "how to achieve compliance with and enforcement of the provisions of applicable laws of the United States."

Part III presents our detailed findings, conclusions and recommendations with respect to the fiscal issues. Part III is sub-divided in five chapters. Chapter 1 presents an overview of the fiscal issues and our major findings, conclusions and recommendations. Chapter 2 analyzes the clarity, consistency and adequacy of the statutory application approval priorities and additional priorities contained in the VEA. Chapter 3 analyzes the clarity and comprehensiveness of the definitions and measures of the fund distribution factors. Chapter 4

provides a detailed description of the methods and mechanisms used by states to distribute VEA funds among eligible recipients. Chapter 5 analyzes the other fiscal provisions which affect the non-Federal funds expended for vocational education purposes.

Part IV of the report presents our analysis of the equity provisions of the VEA. It contains four chapters. Chapter 6 provides an overview of the purpose, organization, and the major findings, conclusions and recommendations of part IV. Chapter 7 analyzes the adequacy of the legal framework of the major civil rights statutes, regulations, and guidelines applicable to elementary, secondary, and post-secondary recipients of VEA funds. Chapter 8 analyzes the provisions in the VEA designed to ensure equal opportunity for disadvantaged and handicapped students. Chapter 9 analyzes the clarity, consistency, adequacy and necessity of the sex equity provisions in the VEA's legal framework.

Part V of the final report contain two chapters which address the adequacy of incentives, oversight mechanisms and sanctions in the current VEA. Chapter 10 describes and analyzes the VEA's uses of incentives to induce states and other eligible recipients to adopt desired behaviors under the VEA. Chapter 11 describes and analyzes the adequacy of the oversight mechanisms and sanctions that are used to ensure that ED, states and local recipients act in accordance with their respective commitments under the VEA.

PART II

SUMMARY OF MAJOR FINDINGS AND CONCLUSIONS

Part II

Summary of Major
Findings and Conclusions

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Part II

Summary of Major Findings And Conclusions

This chapter is divided into two sections. The first section includes a comprehensive overview of the VEA and the civil rights statutes applicable to vocational education programs. The second section sets out the study's major findings and conclusions regarding the clarity, consistency, flexibility, and comprehensiveness of the fiscal and equity provisions in the VEA. Specific findings, conclusions, and recommendations pertaining to specific components of the VEA are set out in the chapters contained in parts III, IV and V.

I. Description of the VEA Legal Framework

A. Introduction

The declaration of purpose (set out in Section 101 of the VEA) and the legislative history identify one overriding goal and five interrelated objectives of the VEA. In addition, the VEA includes mechanisms (prescriptions, proscriptions, and exhortations) which are intended to ensure that the objectives of the Act will be accomplished.

This section of the paper describes the goal, objectives, and major mechanisms in the VEA. It also describes the major civil rights requirements applicable to vocational education programs.

B. The Goal and Major Objectives of the VEA

The declaration of purpose, as set forth in Section 101 of the VEA, identifies one overriding goal of the VEA. The goal is to assist states in ensuring that "all persons in all communities have ready access to vocational training or retraining which is of high quality, which is realistic in light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests, and ability to benefit from such training."

In furtherance of the goal of providing high quality vocational education for persons in all communities, the VEA includes five objectives:

(1) To equalize vocational educational opportunities among eligible recipients by targeting VEA funds for all the purposes set out below (2 through 5) to eligible recipients that have diminished financial ability and higher need populations (measured by concentrations of low-income persons and higher cost students);

(2) To provide assistance to recipients to help pay for the extra costs often associated with providing equal opportunity to special needs populations and eliminating sex discrimination, sex stereotyping, and sex bias;

(3) To provide assistance to states to help improve the planning for the use of all funds for vocational education (i.e., VEA, state and local funds) to maximize the likelihood that the VEA goal will be accomplished;

(4) To provide assistance to recipients to develop new programs and extend and improve existing programs; and

(5) To provide assistance to recipients to maintain (where necessary) existing programs.

C. Structure of the VEA

The VEA, as amended by P. L. 94-482, has three parts:

- o Part A -- State Vocational Education Programs,
- o Part B -- National Programs, and
- o Part C -- Definitions

Within Part A, the State Vocational Education Programs, there are five subparts; they are listed below with their fiscal year 1980 appropriation levels.

Part A -- State Vocational Programs (total):	$762,080,000
Subpart 1 -- General Provisions	$ 11,500,000
Subpart 2 -- Basic Grants	562,266,000
Subpart 3 -- Program Improvement and Supportive Service	124,817,000
Subpart 4 -- Special Programs for the Disadvantaged	20,000,000
Subpart 5 -- Consumer and Homemaking Education Programs	43,497,000

Within Part B, National Programs, there are four subparts, listed below with their fiscal year 1980 appropriation levels.

Part B -- National Programs (total):	$14,800,000
Subpart 1 -- General Provisions	
Subpart 2 -- Programs of National Significance	10,000,000
Subpart 3 -- Bilingual Vocational Training	4,800,000
Subpart 4 -- Emergency Assistance for Remodeling and Renovating of Vocational Facilities	

Part A funds are distributed first to the states, which then distribute the funds to eligible recipients within each of the five subparts. Part B contains the authorization for the national activities, such as the system for collecting national data on participation of students, the Vocational Education Data System (VEDS), and the National

Advisory Council for Vocational Education (NACVE), which are authorized under the General Provisions (Subpart 1). The Programs of National Significance (Subpart 2) contains, among other things, the authorization for a national center for research in vocational education. Bilingual Vocational Training (Subpart 3) receives a very small appropriation annually. Funds have never been appropriated for Subpart 4 -- Emergency Assistance for Remodeling and Renovation of Vocational Facilities.

D. State Administration and Planning

Any state which desires to receive funds under Part A of the VEA must designate a state board to be the sole state agency responsible for the administration of programs under the Act. The state must also assign full-time personnel to assist in reducing sex discrimination and sex stereotyping in vocational education programs and activities throughout the State. Each state is to expend at least $50,000 from the basic grant for this purpose.

Each state must establish a state advisory council representing at least 20 designated interests. There must be appropriate representation by sex, race, ethnicity, and geography on the council to effectively reflect the diverse interests and needs of the general public. The functions and responsibilities of the state advisory council include: identifying manpower as well as vocational needs, commenting on the reports of the State Manpower Services Council, and providing technical assistance

to local advisory councils. The expenditure of funds made available to the council for carrying out its functions is to be determined solely by the council.

Each state must also establish a State Occupational Information Coordinating Committee (SOICC). This SOICC must implement an occupational information system in the state which will meet the common needs for the planning for, and operation of, programs of the state board and of the administering agencies under the Comprehensive Employment and Training Act.

To be eligible to receive funds, a state must maintain on file with the Secretary a general application containing twelve assurances covering a broad range of administrative and fiscal matters, including application approval, fund distribution, and non-supplanting provisions.

The state must submit to the Secretary a five-year state plan by July 1, 1977 for fiscal years 1978 through 1982 and a second five-year state plan on July 1, 1982 for fiscal years 1983 through 1987.

In formulating the plan, the state board is to actively involve a representative of the state agencies for secondary education, post-secondary vocational education, community and junior colleges, and institutions of higher education. The state board must also involve representatives from local school boards, vocational teachers, local school administrators, the State Manpower Services Council, the state agency for comprehensive post-secondary education planning, and the state

advisory council. The state board and these designated representatives must meet at least four times during the planning year. If these representatives are not able to agree on the contents of the state plan, the state board is responsible for reaching a final decision. In this event, the state board must include in the plan the recommendations rejected by the state board and the reason for each rejection. Certain dissatisfied agencies may appeal the state board's decision to the Secretary. The Secretary will then decide whether that state plan is supported by substantial evidence, as shown in the state plan, and will best carry out the purposes of the Act.

The five-year state plan must contain the procedures for carrying out certain assurances of the general application and specific program provisions, including an assessment of employment opportunities in the state, the goals the state will seek to meet employment needs, the planned funding to meet employment needs, the intended uses of funds to meet specific program needs, the policies adopted by the state to eradicate sex discrimination, and a description of the mechanism established for coordination between manpower training programs and vocational education programs.

The planning process also includes the submission of an annual program plan and annual accountability report. The procedural requirements for developing the five-year plan are also applicable to the annual plan and accountability

report but the number of required planning meetings is reduced to three.

Even though the annual plan is essentially an updating of the five-year plan, it must contain the proposed distribution of funds among eligible recipients.

The accountabilty report must include, among other things, a description of the distribution of VEA funds among LEAs and other eligible recipients and a description of how the evaluation information has been used to improve the state's program of vocational education.

E. Standards for Distributing Funds Under Part A of the VEA Among Eligible Recipients

In its general application, a state must provide separate, but somewhat related assurances pertaining to the factors it will use in approving the applications of eligible recipients and in distributing VEA funds to applicants it approves for funding.

In approving applications, the state must "give priority" to applicants which:

1. are located in economically depressed areas and areas with high rates of unemployment, and are unable to meet the vocational education needs of those areas without federal assistance; and

2. propose programs which are new to the areas to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation.

The amount of VEA funds to be made available "to those applicants approved for funding" must be based on "economic,

social and demographic factors relating to the need for vocational education among the various populations and the various areas of the state." In addition, the statute specifies the "two most important factors" the state must use, which are different for funding LEAs and other eligible recipients (OERs)

The two most important factors for distributing VEA funds to LEAs are:

1. the relative financial ability of such agencies to provide the resources necessary to meet the needs for vocational education in the areas they serve; and

2. the relative number or concentration of low-income families or individuals within such agencies.

The two most important factors the state must use in distributing funds to other eligible recipients are:

1. the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students; and

2. the relative number or concentration of students whom they serve, whose education imposes higher than average costs, such as handicapped students, students from low-income families, and students from families in which English is not the dominant language.

In addition to specifying factors a state must use in approving and funding recipient applications, the statute also prohibits a state from using three specific bases for allocating VEA funds among eligible recipients. First, funds may not be allocated on the basis of "per capita enrollment." Second, they may not be allocated "through matching of local expenditures on a uniform percentage basis." Third, VEA funds may not be denied to a recipient "which is making a

reasonable tax effort solely because such recipient is unable to pay the non-federal share of the cost of new programs."

Ed has interpreted the "funding formula" of section 106(a)(5) to apply "to all federal funds distributed under sections 120, 134, 140 and 150," subject to "special funding criteria, priorities and conditions" appearing in other sections in Part A of the VEA.

The application approval and fund distribution provisions of section 106(a)(5) resulted from the Conference Committee combining separate provisions on these subjects from the Senate and House bills. The application approval priorities of sections 106(a)(5)(A)(i) and (ii) are taken verbatim from the Senate bill; the fund distribution factors of section 106(a)(5)(B)(i) are taken verbatim from the House bill and section 106(a)(5)(B)(ii) is an amalgam of both bills and a pre-existing provision.

F. Matching and Set-Asides Provisions

Federal VEA funds must be used to share only in expenditures which are made in accordance with the assurances of the general application, five-year state plan and annual program plan. The Federal share of expenditures under the five-year state plan and annual program plan generally may not exceed 50 percent of the cost of carrying out the programs.

The VEA includes certain set-asides for "national priority programs." At least 10 percent of the state's allotment under section 102(a) of the Act is to be used to pay up to 50 percent

of the excess costs of special programs, services, and activities for the handicapped (except under the circumstances described below); at least 20 percent of the state's allotment under section 102(a) of the Act is to be used to pay up to 50 percent of the excess costs of special programs, services and activities for the disadvantaged and for persons with limited-English-speaking-ability and the cost of stipends for students with acute economic needs which cannot be met under other programs (except under the circumstances described below); and at least 15 percent to pay up to 50 percent of the costs of post-secondary and adult programs, services, and activities. The percentage of the 20 percent set-aside which goes to persons with limited-English-speaking ability is equivalent to the proportion such persons age 15-24 are to the entire population of the state in the same age bracket.

Pursuant to regulations established by the Secretary, a state may exceed the 50 percent Federal share for the handicapped and disadvantaged set-asides by making larger payments with VEA funds to LEAs and other eligible recipients which are otherwise financially unable to provide such programs.

Separate provisions govern the Federal share for state administration and local supervision and administration. The Federal share for state administration of the five-year state plan and annual program plan from funds allotted to the state under section 102(a) of the Act, is up to 50 percent

of the cost of administration of the plans. The Federal share in fiscal year 1978 is up to 80 percent and in fiscal year 1979, the Federal share is up to 60 percent. The Federal share for the cost of local supervision and administration from funds available under section 102(a) must be computed in accordance with either of the two methods set forth in the legal framework.

G. Description of Subparts 2 Through 5 of Part A

1. Basic Grants (Subpart 2)

Each state must use its basic grant, which is 80 percent of the funds allotted under section 102(a) of the Act, for such purposes as vocational education programs, work-study programs, cooperative vocational programs, energy education programs, construction of area vocational education facilities, support of full-time personnel to eliminate sex bias, stipends for students who have acute economic needs which cannot be met by other programs, placement services for students whose needs cannot be met by other programs, industrial arts programs, support services for women who enter programs designed to prepare individuals for programs traditionally limited to men, day care services for children of persons enrolled in vocational schools, construction and operation of residential vocational schools, provision of vocational training institutions and state and local administration. This extensive list of programs, activities, and services has been consolidated into a single basic grant to

allow the states to determine their own priorities for funding. The only express mandates are that the state expend, (1) not less than $50,000 each year for the support of full-time personnel to assist in overcoming sex discrimination, sex stereotyping, and other related matters, and (2) not less than the amount of funds it deems necessary for special programs for displaced homemakers.

2. Program Improvement and Supportive Services (Subpart 3)

The state must use 20 percent of its allotment under section 102(a) of the Act for subpart 3 (program improvement and supportive services). Under program improvement and supportive services, funds may be used for research programs, exemplary and innovative programs, and curriculum development programs. These programs are to be operated by research coordinating units (RCU) or are to be conducted by contracts awarded by the RCU. The state must develop a comprehensive plan of program improvement which includes the intended uses of funds and a description of the state's priorities. Exemplary and innovative programs must give priority to reducing sex bias and sex stereotyping in vocational education.

Not less than 20 percent of the funds reserved for program improvement and supportive services are to be used for guidance and counseling services which may include, among other things, initiation and improvement of counseling services, training to help overcome sex-biased counseling, resource centers for out-

of-school individuals, and leadership for guidance and counseling personnel.

The state may also use part of the funds reserved for program improvement and supportive services for vocational education personnel training. Training may be provided to persons serving or preparing to serve in vocational education programs, including teachers, administrators. supervisors, and vocational guidance and counseling personnel.

Funds under program improvement and supportive services may also be used for grants to overcome sex bias and sex stereotyping. The purpose of these grants is to support activities which show promise of overcoming sex bias and sex stereotyping in vocational education and may be in the areas of research, curriculum development, or guidance and counseling.

The state may also use part of the funds reserved for program improvement and support services for state and local administration.

3. Special Programs for the Disadvantaged (Subpart 4)

Each state must use the funds allotted to it from the authorization under section 102(b) of the Act for special programs of vocational education for disadvantaged persons in areas of high youth unemployment or school dropouts. These projects for the disadvantaged may receive up to 100 percent Federal support.

4. Consumer and Homemaking Education (Subpart 5)

The state must also use the funds allotted to it from the authorization under section 102(c) of the Act for programs of consumer and homemaking education. The Federal share is 50 percent except in economically depressed areas where the Federal share is 90 percent. One-third of the separate authorization must be used in economically depressed areas. In general, grants may be used for (1) educational programs that encourage males and females to prepare for combining homemaking and wage earning roles, develop curriculum materials which encourage elimination of sex stereotyping, give greater consideration to needs in economically depressed areas, encourage outreach programs, prepare persons for the homemaker role, emphasize consumer nutrition and parenthood education, and (2) for ancillary services.

H. Federal Administration and National Advisory Council

1. Grant Distribution

The Secretary must reserve a specified portion of VEA funds and transfer a portion to the National Occupational Information Coordinating Committee and use the remainder of the amount reserved for programs of national significance. The remainder of the VEA funds must be distributed and payments made to states in accordance with the allotment formula and the matching requirements set out in the legislation.

2. Approval of State Applications, Plans, and Reports

The Secretary may not approve a five-year state plan or an annual program plan and accountability report until he/she has made specific findings in writing as to the compliance of the plans and report with VEA and he/she is satisfied that adequate procedures are set forth to ensure that the state's assurances in its state application and the provisions of the state plan and annual plan and report will be carried out. The Secretary must also be satisfied that the annual program plan and accountability report shows progress in achieving the goals set out in the five-year plan.

In particular, the Secretary must provide for appropriate review of each state plan or annual program plan and accountability report by various agencies in ED administering programs relating to the VEA being proposed and may not approve any such plan or report until or unless he/she: (1) has received assurances that the state sex equity personnel have been afforded the opportunity to review the plan or annual plan and report; and (2) the state has used nationally uniform definitions and information elements in compiling the five-year plan and annual plan and report. The Secretary may not disapprove any five-year plan or annual plan and report solely on the basis of the distribution of state and local expenditures for vocational education. The Secretary may not finally disapprove such plans and report or any modification without first affording the state board reasonable notice and opportunity for a hearing.

The Secretary must withhold payments of the VEA funds (in whole or the part affected by a failure to comply) whenever he/she, after reasonable notice and an opportunity for a hearing, finds that (1) the state plan or program plan and report has been so changed that it no longer complies with the provisions of the VEA, or (2) in the administration of the plan or program plan and report, there is a failure to comply substantially with any provision of the VEA.

3. Evaluations

The Secretary must, within four months of the receipt of a state's annual program plan and accountability report, submit to the state board an analysis of such plan and report.

4. Auditing

OVAE must, in at least ten states each fiscal year, conduct a review analyzing the strengths and weaknesses of the programs receiving assistance under VEA (program audits) and ED in the same period must conduct fiscal audits of such programs.

5. Reporting

The Secretary must prepare and submit an annual report to Congress on the status of vocational education in the country during that fiscal year.

6. Establishment of National Vocational Education Data Reporting and Accounting System

The Secretary and the Administrator of the National Center

for Education Statistics must jointly develop information elements and uniform definitions for a national vocational education data reporting and accounting system.

7. National Advisory Council

The National Advisory Council is to (a) advise the President, Congress, and the Secretary concerning the administration of vocational education programs; (b) review and make recommendations on the administration and operation of vocational education programs and other laws affecting vocational education; (c) report to the President, Congress, and the Secretary on its findings and other matters as it deems necessary; (d) identify vocational education and employment and training needs of the nation and assess the extent to which available programs under Federal laws represent a consistent, integrated and coordinated approach to meeting such needs, and comment at least once a year on the reports of the National Commission for Manpower Policy; (e) conduct studies to help formulate council recommendations; (f) conduct independent evaluations of vocational education programs and publish the results of their findings; and (g) provide technical assistance and leadership to State Advisory Councils.

I. Requirements Applicable to Local Recipients

An eligible recipient desiring to receive assistance under Part A of the VEA must satisfy three basic requirements.

First, the eligible recipient must submit an application to the State. Second, the eligible recipient must demonstrate that it has maintained its fiscal effort. Finally, it must establish a local advisory council composed of members of the general public to provide advice on job needs and the relevancy of courses to those needs.

J. Secretary's Discretionary Programs of Vocational Education

The Secretary is to use funds reserved under section 103 (a)(1) of the VEA, not allotted to the National Occupational Information Coordinating Committee, for contracts and grants for program improvement and to support a national center for research in vocational education. The national center is to conduct research on problems of national significance in vocational education, provide leadership development for state and local leaders in vocational education, disseminate research results, develop and provide information to facilitate national planning, act as a clearinghouse for information on contracts to states including the compilation of a bibliography of research projects funded under the Act, and work with state and local agencies in developing program evaluation methods. A Coordinating Committee on Research in Vocational Education is established in the Office of Education which is to develop a plan for establishing national priorities for use of funds available, coordinate efforts of agencies so as to avoid duplication of efforts, and develop a management information system to monitor

and evaluate projects funded under the Act.

1. Training and Development Programs for Vocational Education Personnel

The Secretary is authorized to provide funds for training and development programs for vocational education personnel, including full-time advanced study in vocational education, retraining certified teachers to become vocational educators, and training persons in industry with vocational skills to become teachers. The Secretary will also make available leadership development awards to eligible persons for advanced full-time study in vocational education.

2. Bilingual Vocational Training

The Secretary and Secretary of Labor are to develop and disseminate information on the status of bilingual vocational education training in the nation, evaluate the impact of such training on the shortages of well-trained personnel and unemployment/underemployment of persons with limited-English-speaking ability, and report their findings annually to the President and Congress.

The Secretary is authorized to make grants and enter into contracts with state and local agencies and other nonprofit organizations to provide bilingual vocational training programs, to develop instructional materials, methods and techniques for bilingual vocational training, and to conduct training for instructors of bilingual vocational training.

3. Emergency Assistance for Remodeling and Renovation of Vocational Education Facilities

The Secretary is authorized to provide to local educational agencies in urban and rural areas emergency assistance for remodeling and renovation of vocational education facilities if the facilities are too old or obsolete to provide training which gives reasonable promise of employment. The Secretary is to rank all approved applications according to their need for assistance and pay 75 percent of the costs until allotted funds are exhausted.

K. Civil Rights Obligations

Congress has enacted four laws prohibiting discrimination by recipients of Federal financial assistance. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color and national origin (Title VI). Title IX of the Education Amendments of 1972 prohibits discrimination by educational institutions receiving Federal financial assistance on the basis of sex (Title IX). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination by recipients on the basis of handicap (section 504). The Age Discrimination Act of 1975 prohibits discrimination on the basis of age. Within the Department of Education, these four civil rights statutes are administered primarily by the Office for Civil Rights (OCR).

On March 21, 1979, the Department of HEW published in the

Federal Register guidelines outlining the civil rights responsibilities of recipients of Federal funds offering or administering vocational education programs (vocational education guidelines). The guidelines are generally derived from the requirements set out in the Title VI, Title IX, and Section 504 statutes and implementing regulations. Certain of these guidelines (e.g., pertaining to the allocation of VEA funds) are also based, in part, on the regulations implementing the VEA. The vocational education guidelines have been reviewed by ED and found consistent with its policies.

The vocational education guidelines are applicable to recipients of financial assistance that offer vocational education or perform administrative oversight responsibilities for programs of vocational education or training. This includes state agency recipients.

The guidelines require state agencies responsible for the administration of vocational education programs to adopt a compliance program to prevent, identify, and remedy discrimination by their subrecipients.

The guidelines also explain that recipients may not adopt a formula or other method for the allocation of Federal, state, or local vocational education funds that has the effect of discriminating on the basis of race, color, national origin, sex, or handicap. However, recipients may use such factors if they are included to compensate for past discrimination or to comply with the provisions of VEA designed to assist speci-

fied protected groups.

State agencies and other eligible recipients operating Federally assisted education programs routinely adopt policies and procedures and perform numerous duties affecting the delivery of vocational education services to students. The guidelines identify the major decisions made by recipients applicable to the operation of vocational education programs and require that each decision be made in a non-discriminatory fashion. The major areas of decision include:

- Work study, cooperative vocational education programs, and apprenticeship programs;
- Admissions criteria (residency requirements, numerical limitations by sending schools, vocational educational centers, branches, and annexes, course prerequisites, and limited-English-proficient students);
- Site selection;
- Additions and renovations to existing facilities;
- Architectural barriers;
- Public notification;
- Counseling;
- Recruitment;
- Financial assistance; and
- Housing.

II. General Findings and Conclusions

A. Introduction

The primary purpose of the research conducted by the Legal Standards Project is to address, in part, one of the questions posed by Congress when it mandated the NIE study of vocational education: "how to achieve compliance with and enforcement of the provisions of applicable laws of the United States." The Project concludes that there are six principles which relate to this issue. Set out below is a description of these principles and a general summary of our findings and conclusions regarding VEA's conformity with those principles for which our research provided data. This description and summary will be followed by a more in-depth analysis of VEA's conformity with these principles.

B. Description of Principles and Summary of VEA's Conformity with Principles

The first principle is that the goals and objectives of the VEA must be clear and consistent. The goal of the VEA is clear. The objectives of the VEA are not clearly set out in the declaration of purpose; rather they must be gleaned from the remainder of the statute and the legislative history. The objectives are consistent; however, key mechanisms implementing the objectives are not always consistent.

The second principle is that the incentives in the VEA must induce agencies to agree to adopt desired behaviors

specified in the legislation. The incentives operating at the state level (e.g., existence of a state "entitlement") are effective i.e., they have induced all states to apply for VEA assistance. The effectiveness of the incentives operating at the local level is less certain. An exhaustive examination of this issue is beyond the scope of our study, and is addressed in research performed by other NIE contractors. However, our research at the state level did reveal some components of the legal framework which operate to structurally discourage the local recipients from undertaking prioritized activities. For example, the work-study and cooperative education program's additional priorities impose additional requirements on recipients and are disincentives to seek the funds.

The third principle is that the mechanisms specifying desired behaviors (prescriptions and proscriptions) must further the goals and objectives of the VEA and be clear, consistent, comprehensive, flexible, and realistic (implementable). In general, key mechanisms (especially mechanisms implementing the objective of equalizing opportunities for eligible recipients with limited fiscal ability) do not conform to this principle. However, it is possible to develop mechanisms which further the objectives of the VEA and are clear, consistent, comprehensive, flexible, and realistic (implementable).

The fourth principle is that the VEA and GEPA must contain effective and realistic oversight mechanisms and sanctions. In general, the structure of the enforcement system governing the relationship between ED and the states

is sound. However, there are several oversight mechanisms and sanctions which can and should be clarified and made more effective.

The fifth principle is that Federal and state agencies responsible for overseeing the administration of the VEA must have the capacity, resources, and commitment to carry out their responsibilities. An analysis of the conformity with this principle is generally beyond the scope of our study. However, given the nature of our analysis of the fiscal requirements, we conclude that OVAE has not demonstrated the capacity to implement the fiscal provisions (e.g., the fund distribution and application approval requirements).

The final principle is that local recipients must have the capacity, resources, and commitment to act in accordance with their agreements to adopt behaviors prescribed in the legislation, regulations, and state guidelines. Conformity with this principle is beyond the scope of our research. However, our research identified the extent to which the legal structure creates barriers through inconsistent or inadequate requirements.

C In-depth Discussion of VEA's Conformity with the Principles for Maximizing Compliance with and Enforcement of the VEA

1. Principle No. 1: The Goals and Objectives of the VEA Must be Clear and Consistent

The first principle is that the goals and objectives of the VEA must be clear and consistent. When Congress enacts a law, the first section is usually the declaration of purpose. This section is supposed to contain the goal and objectives of the

law. We conclude that the goal of the VEA, as set out in the declaration of purpose, is clear. The goal of the VEA is to assist states so that:

> all persons of all ages in all communities of the state ... will have ready access to vocational training or retraining which is of high quality, which is realistic in the light of actual or anticipated opportunities for gainful employment, and which is suited to their needs, interests and ability to benefit from such training.

The VEA is a program with multiple objectives. All of the objectives of the VEA, however, are not included in the declaration of purpose (Section 101). In fact, one has to master the provisions of the VEA and its legislative history before certain objectives of the VEA are clearly revealed. In addition, the VEA's declaration of purpose is further confused by the selective inclusion of mechanisms for accomplishing objectives, as well as some, but not all objectives.

We have identified five objectives of the VEA:

(1) To equalize vocational educational opportunities by distributing VEA funds for all the purposes set out below (2 through 5) among eligible recipients on the basis of diminished financial ability and incidence of higher need populations (measured by concentration of low-income persons or higher cost students).

(2) To provide assistance to recipients to help pay for the extra costs often associated with providing equal opportunity to special needs populations and eliminating sex discrimination, sex stereotyping, and sex bias;

(3) To provide assistance to states to help improve the planning for the use of all funds for vocational education (i.e., VEA, state, and local funds) to maximize the likelihood that the VEA goal will be accomplished;

(4) To provide assistance to recipients to develop new programs and extend and improve existing programs; and

(5) To provide assistance to recipients to maintain (where necessary) existing programs.

An analysis of the clarity and consistency of these objectives is set out below.

- Equalizing Educational Opportunities Among Eligible Recipients

The declaration of purpose does not clearly set forth the objective of equalizing educational opportunities among eligible recipients; it simply states that the VEA provides assistance so that all persons in all communities can have ready access to high quality vocational programs. Although this phrase can be interpreted to mean that VEA funds must be used to equalize vocational opportunities by distributing VEA funds among eligible recipients on the basis of diminished financial ability and incidence of higher cost populations (measured by concentrations of low-income persons or higher cost students), it is often interpreted by state officials to mean that equal funds must be distributed to all communities. The objective of equalizing opportunities among eligible recipients was a major focus of the 1976 amendments, but one must master both the relevant VEA program provisions and its legislative history to comprehend this.

Furthermore, the declaration of purpose does not clearly articulate the relationship between this objective and the other four objectives of the VEA. The objective of equalizing vocational opportunities among eligible recipients prescribes

the amount of VEA assistance particular agencies receive; the remaining four objectives specify the nature and purposes for which such VEA assistance shall or may be used. In other words, the fiscal equalization objective governs how much (if any) assistance a particular agency receives whereas the remaining four objectives designate the purposes of the assistance (for example, special needs populations, new programs, and consumer and homemaking).

We conclude that the fiscal equalization objective is consistent with the other four objectives of the VEA because the objective prescribes the amount of funds an eligible recipient receives in order to accomplish the other four objectives, which prescribe the purposes for which such assistance may or must be used. This does not mean that the mechanisms presently set out in the VEA establish a structure which provides for the consistent implementation of these objectives. To the contrary, we conclude that the mechanisms encourage inconsistencies (see below). Nor does this conclusion suggest that a single objective (like the objective in the existing VEA) must govern the distribution of VEA funds for all purposes. We are simply concluding that the objective chosen by Congress in 1976 is inherently consistent with the other four objectives of the Act.

- Help Pay for the Extra Costs Associated with Meeting Civil Rights Obligations and Providing Equal Opportunity

The second objective of the VEA is to help recipients pay for the extra costs associated with meeting civil rights obligations and providing equal opportunity. The declaration of purpose clearly sets out the objective of assisting

recipients overcome sex discrimination, sex stereotyping, and sex bias in vocational education programs. However, it is not sufficiently clear on the equally important objective of providing assistance to better enable recipients to pay for the extra costs which are frequently associated with providing equal access for handicapped and disadvantaged persons to vocational education programs, which is reflected in the national priority program set-asides of Section 110 and subpart 4. This has been a major objective of the Act since 1963.

- Help Improve the Planning for All Funds (Federal, State, and Local) for Vocational Education

The third objective of the VEA to improve planning is clearly articulated in the declaration of purpose. This objective is not discussed in detail in this paper except to the extent that it overlaps with the funds distribution and equity provisions. We conclude that these provisions are conceptually interrelated and potentially consistent. They do tend to conflict at points because of the inadequacies of the mechanisms.

- Assist Recipients Provide New Programs and Extend and Improve Existing Programs

The fourth objective, to assist recipients provide new programs and extend and improve existing programs, is clearly articulated in the declaration of purpose. As we will describe infra, under the VEA the failure to specify mechanisms and the inadequacy of existing mechanisms creates the possibility of conflict between accomplishing this objective and the funds equalization objective. As explained above, we conclude that the objectives are not in conflict; the mechanisms implementing the objectives may (and

often do) result in conflicts.

- Assist Recipients Maintain (Where Necessary) Existing Programs

The objective to assist recipients maintain (where necessary) existing programs is clearly articulated in the declaration of purpose. The legislative history includes a "clarification" of "where necessary" language.[1] Nonetheless, this provision has proven to be difficult to administer because of the vagueness of the language.

2. Principle No. 2: The Incentives Included in the VEA Must Induce Agencies to Agree to Adopt Desired Behaviors

The second principle for maximizing compliance with and enforcement of the VEA is that the incentives included in the VEA must induce agencies to agree to adopt desired behaviors. In the legislative context, an "incentive" is something of value offered by a grantor to an eligible recipient in exchange for an agreement to adopt desired behaviors specified in a law and the implementing regulations or to induce a recipient (which has agreed to adopt the minimally acceptable desired behaviors) to exceed the minimum.

Implicit in the definition of an incentive is the concept of freedom of choice, i.e., states, LEAs and other eligible recipients are not compelled to adopt the desired behaviors specified in the law and regulations -- the decision is voluntary in nature. It is only if a state, LEA, or other eligible recipient accepts something of value from the grantor

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[1] See Sen. Rep. No. 94-882 at 70.

that it must also agree to adopt the specified behaviors.

There are two general types of incentives -- fiscal incentives and nonfiscal incentives. The primary fiscal incentive is the award of funds by the grantor to a grantee, contingent on the grantee's entering into an agreement which specifies that it will carry out certain desired behaviors specified in the law. An example of this type of fiscal incentive is the availability of appropriations under the VEA. Each state, in accordance with a Federal formula, is "entitled" to a predetermined amount of funds. States may choose to apply for these funds. In its applications and plans, a state generally agrees to adopt the desired behaviors specified in the law. The grantor's obligation is to: (1) ensure that the applications and plans submitted by the state contain a description of how it plans to adopt all the desired behaviors; (2) oversee implementation of the agreement; and (3) use sanctions, if necessary, for breach of the promise.

In addition to fiscal incentives, there are also nonfiscal incentives. The most frequently used nonfiscal incentive is the waiver of certain prescribed behaviors where the grantee can demonstrate that it is already manifesting the desired behavior. For example, under Part B of the Education of the Handicapped Act, as amended by P.L. 94-142, the Secretary may waive the non-supplanting provision[2/] where a state can demonstrate that all handicapped children in the state have available to them a free appropriate public education (the desired behavior specified in

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2/ 20 U.S.C. 1413(a)(9)(B).

Part B of EHA).

The purpose of the incentive in the VEA operating at the state level is to induce states to agree to adopt the desired behaviors prescribed in the legislation by offering them Federal assistance. This incentive has been effective, i.e., it has induced all states to agree to adopt the desired behaviors prescribed in the legislation. Given the budget crises currently facing many states, it is likely that all states will continue to accept VEA assistance.

A determination of the overall effectiveness of the incentives in the VEA to induce local recipients to accept VEA funds and thereby adopt desired behaviors is beyond the scope of our study. Other researchers considering this issue have reported conflicting findings. Our own findings, in a more limited analysis, reveal that several of the VEA priorities may discourage the local recipient from undertaking the intended activities. The addition of priorities-within-priorities for work-study, cooperative education, and subparts 4 and 5 programs operate as disincentives to local recipients. Likewise, the excess costs and matching components of the legal framework for the national priority set-asides for the handicapped and disadvantaged, as presently interpreted by ED, may discourage the poorest local recipients from offering these national priority programs. We conclude that the excess cost concept is necessary to ensure that VEA funds are actually used to pay for the extra costs associated with ensuring equal opportunity rather than as general and/or property tax relief. However, we conclude that the ED's interpretation of "excess costs" is inappropriate

and should be amended to balance the need for the provision with the administrative burdens associated with demonstrating compliance. We also conclude that the 1979 Technical Amendments were designed to address the disincentive inherent in the matching component of the set-aside provision. However, ED has not issued final regulations implementing this provision and therefore its effectiveness has not been tested. In considering whether to repeal the matching component of the set-aside provision, Congress should use the analytic framework suggested by GAO in a recent report (See Chap. 8)

3. Principle No. 3: The Mechanisms Specifying the Desired Behaviors (Prescriptions and Proscriptions) Must Further the Goals and Objectives of the VEA and be Clear, Consistent, Comprehensive, Flexible, and Realistic (Implementable)

The third principle for effectuating compliance with and enforcement of the VEA is that the mechanisms specifying the desired behaviors (prescriptions and proscriptions) must further the goals and objectives of the VEA and be clear, consistent, comprehensive, flexible, and realistic (implementable).

Once a state and eligible recipients within a state choose to take advantage of the financial incentive, they must apply for the assistance and agree to adopt the predetermined behaviors. The predetermined set of desired behaviors are generally non-negotiable. The desired behaviors which attach once the state agrees to participate are set out in the statute and implementing regulations. The Federal government can unilaterally modify the terms of the agreement during the period of the grant where the VEA or implementing regulations are modified during the period.

In sum, the state voluntarily chooses to accept the VEA funds. In exchange, it agrees to adopt the behaviors set out

in the VEA and implementing regulations. If at some future date it decides that the terms of the grant are too burdensome or inconsistent with its own priorities it may terminate its relationship and free itself from the terms and burdens.

The "desired behaviors" are set out in the VEA and implementing regulations in the form of prescriptions and proscriptions (mechanisms). In some cases all recipients are expected to adopt certain behaviors; in other cases, recipients are free to choose from among a set of desired behaviors.

To maximize the likelihood of compliance with and enforcement of the VEA, the mechanisms must further the objectives of the VEA and be clear, consistent, comprehensive, and flexible.

In our opinion it is possible to develop clear and consistent mechanisms for carrying out most of the objectives of the VEA in the fiscal and equity areas on which our analysis has focused. Many of these mechanisms could have been articulated through ED's interpretative process. However, in significant part, the statute is too vague and ambiguous about the mechanisms for carrying out VEA objectives for great reliance at this time to be placed on interpretation of the present statute. And in substantial part, the problems which ED has had in interpreting the statute, particularly in the fiscal area, are a result of this. Consequently, clarification of the mechanisms for carrying out certain of the objectives of the VEA is needed. Parts 3 and 4 identifies specific aspects of the legal framework requiring clarification and elimination of inconsistencies, and make recommendations about clarifying provisions that would make more likely the accomplishment of the VEA's objectives.

The Legal Standards Project has identified seven categories of problems with the fiscal equalization and equity components of the VEA.

(1) The mechanisms in the VEA are not organized logically and clearly either by functional requirement or by level of responsibility.

(2) With respect to key components, there is a mismatch between objectives and mechanisms.

(3) Conceptualizing policy issues in the VEA is illusive and difficult because of the general aid and "over and above" nature of the Act.

(4) The existing VEA contains language from previous versions which is no longer appropriate.

(5) With respect to certain key mechanisms, the VEA combines separate approaches to the same issue which are not adequately interrelated.

(6) Key mechanisms are unclear and ambiguous.

(7) Key mechanisms are not sufficiently comprehensive to effectuate the intended consequences.

Set out below is a discussion of each of the seven major categories of problems identified by the Project.

(a) Mechanisms in the VEA are Not Organized Logically and Clearly Either by Functional Requirement or by Level of Responsibility

We conclude that the mechanisms in the VEA are not organized logically and clearly either by functional requirement or by level of responsibility. For example, the requirements which specify the percentages of VEA funds for particular purposes are spread throughout a number of different sections, and it is a major task for the uninitiated reader to understand the interaction of these frequently overlapping percentage requirements. The

functions and responsibilities of state boards, local recipients and the United States Department of Education are also spread throughout the Act. Nowhere does the act set out clearly in one place the functions which each level of government is to perform in the administration of the Act. For example, rules applicable to local recipients are set out in (1) the general application submitted by the state (obligation to submit an application), (2) a section entitled "payments to the states" (maintenance of effort provision), and (3) a section for state and local advisory councils.

(b) With Respect to Key Components of the VEA, There is a Mismatch Between Objectives and Mechanisms

In at least two key areas (sex equity and funds distribution/application approval) there is a mismatch between objectives and mechanisms.

The problems of sex discrimination, sex stereotyping, and sex bias were clearly described in the legislative history. One of the three major objectives of the 1976 Amendments was to address these problems. The declaration of purpose in the VEA provides that a purpose of the Act is "to furnish equal educational opportunities" by "overcom[ing] sex discrimination and sex stereotyping in vocational education programs."

We conclude that the sex equity mechanisms and processes Congress built into the Act have generally not operated to ensure that all States, in the language of the Conference Report, "take vigorous action to overcome sex discrimination and sex stereotyping in vocational education."[3/]

[3/] H.R. Conf. Rept. No. 94-1701 at 213.

The primary reason is that much is authorized, but little is required with respect to the expenditure of VEA funds to achieve sex equity in vocational education. The only expenditures specifically required are (1) $50,000 for full-time sex equity personnel in each state, regardless of size, population, or the number of school districts, and (2) not less than an amount the state "deems necessary" for displaced homemakers and certain other special groups. A state does not have to spend VEA funds on grants to overcome sex bias and sex stereotyping or on supportive services for women or on other sex equity activities that are authorized, but not required. The legal provisions concerning sex equity in the VEA must be strengthened considerably if Congressional intent with respect to "carry[ing] out all programs of vocational education in such a manner as to be free from sex discrimination and sex stereotyping" is to be realized.[4/]

In addition to the mismatch between objectives and mechanisms in the area of sex equity, there is a mismatch with respect to the "new programs" component of the funds distribution/application approval mechanisms and the fiscal equalization objective of the VEA.

The VEA requires states to give priority to program applicants proposing programs new to the area to be served, designed to meet new and emerging manpower needs and job opportunities. ED has

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[4/] Id.

interpreted this to allow states to include new programs as one factor in a funds distribution formula and has required several states to do so.

The inclusion of a new program factor in a formula allows states to be insensitive to the different need and ability to pay for new programs among eligible recipients. Like the other application approval criteria "economic depressed areas", "new programs" is a concept which if need and ability to pay are important, should be used to approve applications of eligible recipients followed by the use of need and ability to pay factors to determine the amount of funding for eligible recipients proposing new programs. ED's interpretation of the measure of new programs states can use in fund distribution formulas increases the likelihood that the new program factor provision will benefit both the most fiscally able and the largest eligible recipients in contravention of the VEA's fiscal equalization of objective.

In sum, the present VEA mechanisms for encouraging new programs are so imperfect and contain so many disincentives for low wealth districts, that it is possible that if these disincentives were eliminated and recipients which are fiscally disabled or in economically depressed areas were put on the same footing as those in growing areas, the former could offer new programs.

(c) Conceptualizing Policy Issues in the VEA is Illusive and Difficult Because of the General Aid and "Over and Above" Nature of the Act

The Vocational Education Act is different from most Federal education programs because it is not an "over and above" or special purpose program. Since 1917 VEA funds have been used to assist states and school districts to provide programs that have become fully integrated into the secondary and post-secondary education. This integration appears, in large part, to have been the conceptual justification for state matching. If this is a program which is closely akin to "general" education, then it was reasonable to require states to share the burden. Of course, it should be noted that the state share in funding base vocational education programs has expanded to a much higher proportion than the Federal program. It is also important to note that the Federal share was not premised on paying for the excess cost of vocational education over the regular cost of educating a secondary or post-secondary student. VEA funds could pay for the first or the last dollar -- it made no difference. If the state chose to fund the education of certain students fully with VEA funds, that was permissible.

Since 1963, at least, VEA funds have also had certain characteristics of an "over and above" or extra costs program. Handicapped and disadvantaged set-asides were from the beginning designed to assist recipients pay for the extra costs of providing equal opportunities for populations thought to have been underserved in vocational education. Excess cost matching for these programs imposed after the 1976 amendments symbolized better than any other fact the dual nature of the VEA. Vocational educators saw VEA funds as well integrated into the main program and were

willing to use Federal set-aside funds for excess costs but were resistant to using additional Federal or state or local funds for matching excess costs.

More than any other factor, this combination of general aid and added cost elements within a single Act, which superficially appear as if they should work together within the same program applications and funding formula. have made conceptualizing legal and policy issues in the VEA illusive and difficult.

(d) The Existing VEA Contains Language from Previous Versions Which is No Longer Appropriate

Over time, the VEA has undergone major changes. In several instances provisions from previous versions of the VEA have been retained even though they are no longer appropriate. For example, the declaration of purpose provides, in part, that one of the purposes of the VEA is "to provide part-time employment for youths who need the earnings from such employment to continue their vocational training on a full-time basis" first appeared in 1963. The 1963 Act contained a separate category for "Work-Study Programs for Vocational Education Students" (P.L. 88-210, Sec. 13) to carry out this stated purpose, and the 1968 Act continued to place a priority on work-study by making it a separate category (P.L. 90-576, Part H). In the 1976 legislation, however, work study continues to be highlighted in the Declaration of Purpose, but the category is consolidated into the Basic Grant and no funds are earmarked specifically for it.

A second example (which has more significant policy

relevance than the first example) concerns the relationship between the general standards for distributing VEA funds among eligible recipients and the specific funds distribution provisions pertaining to work-study, cooperative vocational education, and consumer and homemaking education.

Prior to 1976, each of these programs existed as a separate categorical program, with its own separate funds distribution procedure and standards. In 1976, when most categorical aid programs were eliminated in the VEA amendments, the work-study and cooperative education programs programs were folded into Subpart 2 as permitted uses. Although included among the general permitted uses of Subpart 2, each program retained its own separate criteria. In a similar fashion, the Consumer and Homemaking Education program, which retained its separate authorization contains an additional priority for economically depressed areas. This creates a priority-with-in-a-priority phenomena for each of these uses, with additional confusion over whether the overall priorities are in addition to the special priorities, and how the conceptual overlap among the multiple priorities is to be treated.

(e) With Respect to Certain Key Mechanisms, the VEA Includes Separate Approaches to the Same Issue, Which Are Not Adequately Interrelated

The application approval and funds distribution requirements have, as implemented, required the development by states of formulas for distributing Federal funds. They have also given rise to serious problems in interpretation and enforcement. The statutory provisions involved appear in Section 106(a)(5)(A) and (B) of the 1976 Act. Section 106(a)(5)(A) affects the approval of applications for funds and requires the States to give priority to those applicants which--

> (i) are located in economically depressed areas and areas with high rates of unemployment, and are unable to provide the resources necessary to meet the vocational education needs of those areas without Federal assistance, and
>
> (ii) propose programs which are new to the area to be served and which are designed to meet new and emerging manpower needs and job opportunities in the area and, where relevant, in the State and the Nation....

The second separate provision (Section 106(a)(5)(B)), pertains to funds distribution and requires both that

> the State shall, in determining the amount of funds available under this Act which shall be made available to those applicants approved for funding, base such distribution on economic, social and demographic factors relating to the need for vocational education among the various populations and the various areas of the State..

and that two specified factors must be the "two most important factors in determining this distribution." In the case of LEA's these are:

1. the relative financial ability of such agencies to provide the resources necessary to meet the need for vocational education in the areas they service; and
2. the relative number or concentration of low-income families or individuals within such agencies.

For other eligible recipients, the two most important factors are:

1. the relative financial ability of such recipients to provide the resources necessary to initiate or maintain vocational education programs to meet the needs of their students; and
2. the relative number or concentration of students whom they serve whose education imposes higher than average costs, such as handicapped students, from low-income families, and students from families in which English is not the dominant language.

In addition, the statute (in Section 106(a)(5)(B)(ii)) prohibits states from using three types of allocation procedures. First, Federal funds may not be allocated solely on the basis of "per capita enrollment." Second, they may not be allocated solely "through matching of local expenditures on a uniform percentage basis." Third, VEA funds may not be denied to an applicant "which is making a reasonable tax effort solely because such recipient is unable to pay the non-Federal share of the cost of the new programs." (Sec. 106(a)(5)(B)(ii))

These requirements combine provisions from both House and Senate bills. Both Houses had concluded that existing statutory requirements did not ensure that districts and institutions received Federal funds commensurate with their needs. Both, therefore, introduced requirements designed to correct the situation.

The House did so through the funds distribution requirements. The Senate did so through requirements for application approval which also instructed states to give priority to applicants proposing new programs. The final Act combines requirements from the House and Senate bills, repeated verbatim.

The general intention of Congress with respect to the allocation of vocational education funds among school districts and other eligible recipients appears relatively clear: states were to allocate funds so as to equalize and expand educational opportunities by giving priority to applicants with greater needs for vocational education, to applicants with limited fiscal ability and to applicants proposing new programs in

response to new and emerging training needs. However, while the general intention is clear, the statutory language leaves many important operational issues unresolved.

Although the application approval and funds distribution criteria are enumerated separately, it is nowhere specified that they must be applied through separate procedures. Consequently, there are three major possible interpretations of how a state might use the "priority and "distribution" factors. It might first decide which applicants to approve on the basis of priority factors and then use separate criteria for funding approved applications. Or it could merge all the statutory factors into one funds distribution process, but establish a cut-off point so that some applicants receive no VEA funds. Finally, it might fund all applicants through a single funds distribution process using all the factors.

(f) Key Mechanisms Are Unclear and Ambiguous

The previous paragraph identifies the basic problem created by the inclusion of both the House and Senate provisions for addressing the issue of fiscal equalization. Three additional problems with the funds distribution provisions stem from the lack of clarity and ambiguity in the statutory provisions. The first concerns the relative weight to be assigned to particular factors. The second relates to the actual measures to be used to represent the factors. The third concerns tensions between funding and planning provisions.

The statute is extremely unclear concerning the issue of what preference and weight should be given to particular factors. The reference to "two most important factors" seems to imply that states should use clearly specified arithmetic formulas (since otherwise one can hardly determine whether or not a statutory distribution factor is more important than any other individual factor in use.) However, beyond, this, the statute gives little guidance on weighting.

Thus, it is unclear (1) whether the "two most important" factors for funds distribution should be given greater weight than the priority factors, (2) how distribution criteria and priority factors are to be combined with priority criteria appearing elsewhere in the statute (e.g., those giving priority to areas with high youth unemployment and school dropout rates in the allocation of cooperative vocational education funds), (3) whether there should be any limit set on how many other "economic, social and demographic factors relating to the need for vocational education" which a state may use and (4) exactly how much more important each of the specified criteria is to be than any of the others. These last two points mean that the combined effect on distribution of the statutory factors could in theory be quite limited. Nor is the lack of specific, mandatory factor weights offset by any specification of intended outcomes other than the prohibitions of distribution on the basis of per capita enrollment or uniform percentage. In general, the range of permissible weightings, and distributions, is left unspecified.

The statute also leaves unspecified a number of important issues relating to the definition and measurement of factors. The first is that certain of the statutory factors appear to overlap. Both the application approval and the funds distribution provisions refer to fiscal inability. In addition, one of the priority provisions refers to "economically depressed" areas and areas with "high rates of unemployment," although one way of measuring economic depression may be high rates of unemployment. It is unclear whether overlapping terms may be merged by states or must each be used separately.

In addition, there is considerable ambiguity in the definitions given the "priority" factors, each of which in fact constitutes an amalgam of factors. One requires, for example, that priority be given to applicants who (1) are in "economically depressed areas" and (2) are in areas with "high rates of unemployment" and (3) cannot provide the necessary resources for vocational programs without Federal help (Sec. 106(a)(5)(A)(i)). The statute does not specify whether states should first choose applicants from economically depressed areas, and then, from among these, those with high rates of unemployment, and so on. Nor does the law indicate whether or not these are additive concepts, to be scored separately and summed. Similarly, it is unclear whether a state may give priority to one of these concepts to the exclusion of others. The same problem applies to the "new programs" criterion.

By contrast, the definitions of the two distribution criteria are reasonably clear. However, both they and the priority criteria leave issues of measurement unresolved. Data on such characteristics as unemployment rates, and numbers of low-income families are frequently not available by school district, and prorating data from larger units (such as counties) can result in inaccurate estimates; and, as the following section on Federal interpretation will illustrate, it is extremely difficult to develop a sensible operational definition of "new" programs.

The statute's lack of specificity in defining factors and stating how they should be measured leaves room for a very wide range of distributional outcomes. For example, different definitions of financial ability can identify very different districts as "needy." Similarly, the way raw data relating to a given factor are used and inserted into a formula can affect enormously the apparent range of need and relative claim on resources of an applicant for funds. The effects of the statute's lack of specificity in these respects are discussed further below in describing states' implementation of the provisions.

Finally, there is an incipient tension between the approval and distribution requirements and those parts of the Vocational Education Act intended to promote comprehensive planning. As already noted, the statute implies that each state is to use an arithmetic formula, which will then determine completely how funds are distributed. However, this distribution will

not necessarily correspond to the priorities and decisions that emerge from the planning process -- especially since the latter is likely to involve subjective judgements of program quality and need, whereas the distribution provisions require that only social, economic and demographic factors relating to need be used, presumably factors on which objective data and not simply subjective judgment are available. The statute nowhere addresses this possible tension, discussed further in Chapter 4.

The VEA is unclear and seemingly contradictory about the relationship between VEA funds and state and local vocational educational resources through the distribution of Federal dollars. On the one hand, the requirement that states submit plans for all vocational education funds suggest a Federal role in all vocational funds. On the other hand, the Secretary cannot disapprove a state plan solely because of its distribution of state and local funds, and does not require data on the distribution of state or local funds. In our research two states integrated their state and Federal vocational education dollars and undercut the equalization effects of VEA funds. ED has never realized that this occurs, because they interpret their mandate to look soley at the Federal funds.

With respect to the sex equity provisions, the VEA includes several phrases which are unclear. For example, the VEA provision that all state contracts for exemplary and innovative projects give "priority" to programs and projects

designed to reduce sex bias and sex stereotyping in vocational education is unclear. Operationally, what does "give priority" mean? The requirement that states report in their annual plan the "results" of compliance with the equal access policies in the five-year plan is apparently not sufficiently precise because states are reporting activities rather than in terms of outcomes or impact.

(g) Key Mechanisms Are Not Sufficiently Comprehensive to Effectuate Intended Consequences

We have identified several key areas where the mechanisms contained in the existing VEA are not sufficiently comprehensive to effectuate the objectives.

With respect to funds distribution and application approval, the key areas requiring greater detail include: (1) a mechanism which clarifies how priority is to be given to the two application approval criteria; (2) the operation of the priority-within- priority for work-study, cooperative education; (3) the mechanism through which the funds distribution and application approval factors relate to one another; and (4) to the extent a formula is determined to be the mechanism, it must have detailed parameters on the numbers, types, scaling and weighting of the composite factors.

In addition to the above issues, it is important to note that the VEA places great emphasis on targeting additional resources to the poorest recipients and yet the VEA is totally silent with respect to the distribution of VEA funds among institutions within a district, i.e., there are no intra-district targeting provisions requiring the use of VEA funds in schools with the highest incidence of children in greatest need of assistance.

The general lack of requirements applicable at the local level, i.e., the level at which programs are implemented, is striking in comparison to the level of detail of provisions applicable at the state level (i.e., the level at which planning takes place)

4. Principle No. 4: The VEA and GEPA Must Contain Effective and Realistic Oversight Mechanisms and Sanctions

The fourth principle for effectuating compliance with and enforcement of the VEA is that the VEA and GEPA must contain effective and realistic oversight mechanisms and sanctions. The VEA and GEPA establish a system for ensuring that VEA funds are used by state and local recipients in accordance with the rules set out in the legislation and implementing regulations. The enforcement system operates at the three stages in the life of a grant:

(1) pre-grant period; (2) implementation period; and (3) post-grant period.

In general, the basic enforcement scheme governing the relationship between ED and the states is sound. At the pre-grant stage, ED reviews state plans and disapproves those plans which fail to satisfy the requirements in the law and regulations. This process theoretically creates an understanding of mutual expectations between the parties prior to the point at which funds are obligated. At the implementation stage, ED provides technical assistance and monitors the actual implementation of the plans and takes enforcement actions only against those states which fail to live up to the commitments set out in their state plans. At the post-grant period, ED conducts audits and recoups misspent funds.

Although the basic framework is sound, there are several areas requiring improvement. One, although states are required to submit an excessive amount of data in state plans and accountability reports, OVAE does not require that states submit appropriate data in state plans and accountability reports regarding key requirements such as funds distribution.

For example, it was difficult in several instances to understand to whom and on what basis VEA funds were distributed to recipients. States which used funding pools, or which linked state fund distribution to Federal VEA fund distribution did not report this to ED in their reports. The plans and reports did not provide sufficient information

to describe how the required factors were defined, calculated or weighted in the formula.

Two, OVAE frequently fails to enunciate clear policies in areas requiring clarification or reverses its policy in mid-year, thereby placing a severe strain on the Federal/state relationship. Where OVAE reverses a clearly articulated and universally applied policy in mid-year, the new policy should not go into effect until the beginning of the next school year. Postponing the effective date of the new policy should not be construed as excusing states which relied on statements or actions by Federal officials that are contrary to pre-existing policies since waivers of statutory and regulatory provisions are prohibited as being contrary to public policy.

The enforcement scheme governing the relationship between states and local recipients is not as fully developed as the Federal/state scheme. The major oversight responsibility and sanction set out in the VEA is application review approval/disapproval. Other functions, such as monitoring and auditing are set out in GEPA and EDGAR. What constitutes satisfaction of the mandate to monitor is unclear and OVAE has not assumed a leadership function in clarifying provisions in GEPA and EDGAR. With respect to auditing, it is unclear whether any auditing is in fact required. The withholding sanction should be supplemented by authority for

states to enter into compliance agreements. To the extent auditing is required, the procedure for resolving audits and recouping misspent funds must be clarified.

5. Principle No. 5: The Federal and State Agencies Responsible for Overseeing the Administration of the VEA Must Have the Capacity, Resources, and Commitment to Carry Out Their Responsibilities

The fifth principle for effectuating compliance with and enforcement of the VEA is that the Federal and state agencies responsible for overseeing the administration of the VEA must have the capacity, resources and commitment to carry out their responsibilities. The research conducted by the Legal Standards Project focused on the adequacy of the VEA legal framework rather than the capacity and commitment of OVAE and the states to carry out their obligations. However, several findings relevant to adequacy of the legal framework also apply to the capacity and commitment of the Federal and state agencies to carry out their obligations.

With respect to the funds distribution and application approval requirements, we found that the Federal government, through constant prodding by such groups as the NAACP Legal Defense and Education Fund, evidenced some commitment to enforce these provisions, but demonstrated a clear incapacity to carry out this commitment. As explained above, part of the problem clearly lies with the vagueness and ambiguities in the VEA. However, these ambiguities in large part could have been addressed through administrative action.

A consequence of the failure of the VEA clearly to articulate mechanisms for carrying out its objectives and ED's unclear and inconsistent interpretations has been needless friction between ED and the states. This has been the case particularly when ED has approved state five year and annual program plans and subsequently has disapproved state practices and interpretations it previously approved. One might conclude that such friction was healthy if ED's interpretations ensured that VEA objectives would be carried out, since bringing about change is virtually always accompanied with friction, at least in the short run. However, many of ED's interpretations were rightly perceived by the states as technical, overly rigid, illogical, inconsistent, as well as insensitive to the objectives of the VEA. With some exceptions , ED's interpretations appeared to have been more productive of conflict than progress toward accomplishing VEA objectives. This is particularly true with respect to fiscal issues.

6. Principle No. 6: Recipients Must Have the Capacity, Resources and Commitment to Act in Accordance With Their Agreements to Adopt Desired Behaviors

The sixth principle is that recipients must have the capacity, resources, and commitment to act in accordance with their agreements to adopt desired behaviors once they accept VEA funds. An analysis of this principle is beyond the scope of our study, although it is addressed systematically by other research conducted by NIE.

However, our research did reveal several ways in

in which the VEA was insensitive to recipient's capacity to act in concert with the VEA mandates. For example, the required data bases for application approval and funds distribution factors were frequently not obtainable in a usable form. The new program factor, which was never precisely defined, placed a responsibility on states to monitor local educational agencies' activities in a manner which for many states conflicted with their legal authority and organizational capacity. Finally, the excess cost requirement imposed a level of record keeping and accounting with is difficult for many states and LEAs.